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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

**JOHN PETTITT, MURPHY LABRADOR  
CORPORATION, MAX GSD TRUST OF 1996 BY  
BARBARA MUSSER, TRUSTEE,**

Plaintiffs,

v.

**JOHN CHIANG, individually and in his capacity as  
STATE CONTROLLER OF THE STATE OF  
CALIFORNIA,**

Defendant.

CV 07-5854 CW

**NOTICE OF MOTION AND  
MOTION TO DISMISS OR, IN  
THE ALTERNATIVE, FOR A  
MORE DEFINITE  
STATEMENT (Fed. R. Civ. P.  
12(b)(6), (e))**

Hearing: March 6, 2008  
Time: 2 p.m.  
Department: 2, Fourth Floor  
Judge: The Honorable  
Claudia Wilken

To Plaintiffs John Pettitt, Murphy Labrador Corporation and Max GSD Trust of 1996 by Barbara Musser, Trustee, PLEASE TAKE NOTICE THAT on March 6, 2008 at 2 p.m. in Department 2, Fourth Floor, 1301 Clay Street, Oakland, California, Defendant John Chiang, individually and in his capacity as the Controller of the State of California will and does move this Court for an order dismissing the complaint in this action or, in the alternative, if the court finds that some claim for relief is set out in the complaint as currently drafted, an order requiring the plaintiff to restate the complaint in a form that will permit a responsive pleading.

Notice of Motion and Motion to Dismiss Or, in the Alternative, for a More Definite Statement - *Pettitt v. Chiang* - CV 07-5854 CW

1 This motion is based upon the pleadings and papers on file in this action, this Notice of  
2 Motion and Motion, the accompanying Memorandum of Points and Authorities in Support of  
3 Motion, and whatever evidence and argument is presented at the hearing of this motion.

4 The grounds for the motion are that the complaint fails to state a claim against this  
5 defendant on which relief may be granted. In addition, the complaint fails to allege any of the  
6 operative facts which would permit the filing of a responsive pleading. The complaint does not  
7 indicate what allegedly wrongful conduct defendant engaged in, when this unspecified wrongful  
8 conduct occurred, the nature of plaintiffs' alleged damages, whether plaintiffs ever submitted a  
9 claim for their property, whether they were ever paid on the claim, or whether the claim was  
10 rejected. Without this basic information, defendant cannot begin to formulate an appropriate  
11 response to the complaint, including ascertaining whether the claims are untimely or barred by  
12 the Eleventh Amendment.

13 The complaint should be dismissed because it fails to allege sufficient facts to state a  
14 cognizable claim. If the Court determines that there is a valid claim asserted somewhere in the  
15 complaint, the controller is still unable, with reasonable effort, to draft a responsive pleading so  
16 that an order requiring the plaintiffs to provide a more definite statement is appropriate.

17 Dated: January 22, 2008

18 Respectfully submitted,

19 EDMUND G. BROWN JR.  
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21 STEPHEN P. ACQUISTO  
22 Supervising Deputy Attorney General

23 /s/ Ross C. Moody  
24

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